

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

AFFYMETRIX, INC.,	)	
	)	
Plaintiff/Counter-	)	C. A. No. 04-901 (JJF)
Defendant,	)	
	)	
	)	
	)	
ILLUMINA, INC.,	)	
	)	
Defendant/Counter-	)	
Plaintiff.	)	

**SECOND NOTICE OF DEPOSITION OF ILLUMINA, INC.  
PURSUANT TO FED. R. CIV. P. 30(b)(6)**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Plaintiff Affymetrix, Inc. ("Affymetrix"), by and through its attorneys, will take the deposition of Illumina, Inc. ("Illumina") by oral examination at the Hilton San Diego Airport/Harbor Island Hotel, 1960 Harbor Island Drive, San Diego, California, 92101. Illumina is directed, pursuant to Federal Rule of Civil Procedure 30(b)6), to designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf with respect to the matters set forth in Attachment A.

The deposition will commence at 9:30 a.m. on October 27, 2005. The deposition will be recorded stenographically, with the capacity to provide instant visual display or playback of the testimony, and by video by an officer authorized to administer oaths. All counsel are invited to attend and examine the witness.

MORRIS, NICHOLS, ARSHT & TUNNELL

  
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September 20, 2005  
484005

**ATTACHMENT A****DEFINITIONS**

Affymetrix hereby incorporates by reference the Definitions included in Affymetrix, Inc.'s First Set of Requests for Production of Documents, served on February 8, 2005, Affymetrix, Inc.'s Second Set of Requests for Production of Documents, served on March 30, 2005, and Affymetrix, Inc.'s Third Set of Requests for Production of Documents, served on July 20, 2005.

**AREAS OF TESTIMONY**

1. Any false or misleading statements by Affymetrix to Illumina's customers or potential customers regarding Illumina's goods and services, including what the statement was, when the statement was made, who made the statement and to whom the statement was made, how Illumina learned about the statement and communications between Illumina and the customers or potential customers regarding the statement.
2. Sales that Illumina has lost to Affymetrix, including the identity of the potential customers, the identity, specifications and cost of the Illumina products offered to the potential customers and the Affymetrix products sold to the customers, the identity of any other company competing for that sale, the reasons Illumina did not make the sale and the correspondence between Illumina and the potential customers.
3. Sales that Illumina has lost to any company other than Affymetrix, including the identity of the potential customers, the identity of the company who made the sale, the identity, specifications and cost of the Illumina products offered to the potential customers and the products actually sold to the customers, the reasons Illumina

did not make the sale and the correspondence between Illumina and the potential customers.

4. Sales that Illumina has lost to Affymetrix as a result of false and misleading statements by Affymetrix, including the identity of the potential customer, the statements made by Affymetrix that caused Illumina to lose the sale, the date of the false and misleading statements, the identity of the individual making the statement and the individual or individuals to whom the statements were made and the correspondence between Illumina and the potential customer regarding the false and misleading statement made by Affymetrix.

5. Sales that Illumina has made where Illumina is aware that Affymetrix was also competing for the sale.

6. Sales for which Illumina competes or has competed with any company other than Affymetrix.

7. Statements made by Illumina employees or agents about Illumina's technology or Affymetrix's technology in connection with the sales referenced in paragraph 5.

8. All customer accounts or potential customer accounts for which Illumina and Affymetrix have competed or are competing.

9. All customer accounts or potential customer accounts for which Illumina competes with any company other than Affymetrix.

10. Any unfair and unlawful business acts or practices engaged in by Affymetrix.

**CERTIFICATE OF SERVICE**

I hereby certify that on September 20, 2005, I electronically filed a Notice of Deposition of Illumina, Inc. Pursuant to Fed. R. Civ. P. 30(b)(6) using CM/ECF which will send notification of such filing(s) to the following:

Richard K. Herrmann, Esquire  
Mary B. Matterer, Esquire  
Morris, James, Hitchens & Williams LLP  
222 Delaware Avenue, 10<sup>th</sup> Floor  
Wilmington, DE 19801

I hereby certify that on September 20, 2005, I have caused to be sent by Federal Express, the above-mentioned document to the following non-registered participants:

Marcus E. Sernel, Esquire  
Kirkland & Ellis LLP  
200 East Randolph Drive  
Chicago, IL 60601

*/s/ Maryellen Noreika*  
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Maryellen Noreika (#3208)  
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